

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

EUGENE WILLIAMS,

Defendant-Appellee.

UNPUBLISHED

August 31, 2004

No. 234442

Wayne Circuit Court

LC No. 00-011044

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order dismissing the case following the grant of defendant's motion to suppress his confession. We reverse and remand.

The admissibility of a juvenile's statement depends upon whether, under the totality of the circumstances, the statement was voluntarily made. The test of voluntariness is the same as that for an adult: whether, considering the totality of the circumstances, the confession was the product of an essentially free and unconstrained choice or whether the defendant's will was overborne and his capacity for self-determination was critically impaired. *People v Givans*, 227 Mich App 113, 120-121; 575 NW2d 84 (1997).

The factors to be considered in determining the admissibility of a juvenile's confession include (1) whether the requirements of *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), were met and the defendant clearly understood and waived those rights, (2) the degree of police compliance with MCL 764.27 and the juvenile court rules, (3) the presence of an adult parent, custodian or guardian, (4) the defendant's personal background, (5) the defendant's age, educational and intelligence level, and the extent of his prior experience with the police, (6) the length of detention before the statement was made, (7) the repeated and prolonged nature of the questioning, and (8) whether the defendant was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep or medical attention. *Givans, supra* at 121; *People v Good*, 186 Mich App 180, 189; 463 NW2d 213 (1990). Other relevant factors are whether the statement was induced by a promise of leniency or by threats. *Givans, supra* at 120, 123.

In reviewing a trial court's determination of the voluntariness issue, this Court must examine the entire record and make an independent determination. *People v Gould*, 225 Mich App 79, 88; 570 NW2d 140 (1997). The trial court's findings of fact will not be disturbed unless

they are clearly erroneous. *People v LoCicero (After Remand)*, 453 Mich 496, 500; 556 NW2d 498 (1996). “The trial court’s factual findings are clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made.” *Givans, supra* at 119.

The evidence showed that defendant was sixteen years old and had completed the ninth grade, not just the eighth grade as the trial court found. Although the trial court found that defendant had no prior contacts with the criminal justice system, that finding was not established by the evidence. Defendant was advised of his rights through a form and was able to read his rights aloud without difficulty. Although Officer Thomas did not have defendant explain the meaning of each right to ensure that he understood them, Thomas paraphrased all but one right for defendant, who said that he understood his rights. Defendant confirmed his understanding by initialing each right and signing the advice of rights form. The trial court clearly erred in finding that Thomas told defendant that an attorney would be appointed for him but was not immediately available. Rather, a codefendant testified that another officer told him something to that effect. Defendant was questioned only once. The interrogation took place during the afternoon. It began within half an hour of defendant’s arrival at the station and lasted two to three hours with breaks in between. There was no evidence that defendant was threatened or mistreated in any way. Although defendant was not immediately taken before the family court upon his arrest, that is not a requirement when a juvenile is charged as an adult under the automatic waiver statute, MCL 600.606. *People v Spearman*, 195 Mich App 434, 443-445; 491 NW2d 606 (1992), rev’d in part on other grounds sub nom *People v Rush*, 443 Mich 870; 504 NW2d 185 (1993), overruled in part on other grounds by *People v Veling*, 443 Mich 23, 43; 504 NW2d 456 (1993). Defendant’s parents were not present and it is unclear whether the police attempted to contact them. On the other hand, there was no evidence that defendant asked to have a parent present. The absence of a parent does not render a juvenile’s confession involuntary; it is but one of several factors to be considered. *Givans, supra* at 121; *People v Inman*, 54 Mich App 5, 9; 220 NW2d 165 (1974). Given the totality of the circumstances, we find that defendant’s confession was not involuntary and thus the trial court, which relied on clearly erroneous factual findings, erred in ordering suppression.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly